

provide consistent RAES eligibility treatment for market-makers in the various index-related options. In addition, the proposal would authorize the appropriate Market Performance Committee to establish and enforce maximum percentages of transaction and contract volume that market-makers can execute through RAES transactions. The Commission believes that this should help to ensure that market-makers standing in an index-related option crowd live up to their obligations to improve, update, and honor competitive markets in their appointed option classes in person, and do not simply stand there for the purpose of accepting RAES trades.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2002-49), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47308; File No. SR-NASD-2003-14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Make Permanent Nasdaq's Pilot Program That Makes Available Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

February 4, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-

4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to make permanent its pilot program that makes available several Nasdaq services and facilities until 6:30 p.m. Eastern Time. The text of the proposed rule change is available at Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In October 1999, the Commission approved a pilot program ("Program") that made available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time.⁶ Under the original Program, Nasdaq provided, until 6:30 p.m., the following services: (1) SelectNet Service ("SelectNet"); (2) Automated Confirmation Transaction Service ("ACT"); (3) Nasdaq Quotation Dissemination Service ("NQDS"); and (4) Nasdaq Trade Dissemination Service ("NTDS").

In August 2002, Nasdaq modified the terminology applicable to the Program to reflect the pending introduction of Nasdaq's SuperMontage system.⁷ Since its original approval, the Program has been extended numerous times and has operated continuously.⁸ Nasdaq now

proposes to make the Program permanent.

Nasdaq proposes no substantive or technical changes to the pilot program. Nasdaq's permanent after-hours program will operate in the same manner as the current Program. Like the pilot, the posting of quotations and/or trading of securities by NASD members during the period of time after Nasdaq's normal market close and before 6:30 p.m. Eastern Time will be entirely voluntary. Quotes entered after-hours will continue to be disseminated by Nasdaq via NQDS,⁹ and Nasdaq's ACT system will continue to accept trade reports up to 6:30 p.m. Eastern Time. Nasdaq will also continue to disseminate transaction reports to the public via the SIP. The after-hours session will continue to operate under the following general terms and conditions as set forth in the Commission's original approval order of the pilot:

- Any Nasdaq market maker that wishes to post quotations and trade during the 4 p.m. to 6:30 p.m. time period shall be obligated to post firm two-sided quotations when opening and making its market but may thereafter enter or leave the market on the hour or half-hour up to 6:30 p.m.
- NASD member firms that do not wish to open their market and instead simply send customer or proprietary orders to other market participants for display and/or execution will likewise not be obligated to post firm two-sided quotes.¹⁰
- Regardless of an NASD member's quotation activity, all transactions in Nasdaq National Market, SmallCap, Convertible Debt and over-the-counter equity securities executed between the hours of 9:30 a.m. and 6:30 p.m. Eastern Time must be reported to Act within 90 seconds.
- NASD members who participate in the after-hours session must operate in conformity with all NASD Rules except those that are limited by their express

1999)(SR-NASD-99-57); 42481 (March 1, 2000), 65 FR 12310 (March 8, 2000)(SR-NASD-2000-07); 43302 (September 19, 2000), 65 FR 57852 (September 26, 2002)(SR-NASD-2002-56); 43953 (February 12, 2001), 66 FR 10927 (February 22, 2001)(SR-NASD-2001-12); 45503 (March 5, 2002), 67 FR 10955 (March 11, 2002)(SR-NASD-2002-29). The pilot is currently scheduled to terminate on January 31, 2003. See Securities Exchange Act Release No. 46532 (September 23, 2002), 67 FR 61367 (September 30, 2002)(SR-NASD-2002-118).

⁹ The best bid and best offer in a particular security will be sent to the consolidated Securities Information Processor ("SIP") for full public dissemination.

¹⁰ NASD market makers that do not elect to open their quotes would still be obligated to trade report transactions during the 4:00 p.m. to 6:30 p.m. time period consistent with current trade reporting rules.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. 17 CFR 240.19b-4(f)(6).

⁶ See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999)(SR-NASD-99-57).

⁷ See Securities Exchange Act Release No. 46398 (August 22, 2002), 67 FR 55290 (August 28, 2002)(SR-NASD-2002-114).

⁸ See Securities Exchange Act Release Nos. 42003 (October 13, 1999), 64 FR 56554 (October 20,